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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,118	03/24/2004	Zachary D. Wiseman	120-001-1	3669
7590 Steven W. Weinrieb SCHWARTZ & WEINRIEB Crystal Plaza One, Suite 1109 2001 Jefferson Davis Highway Arlington, VA 22202			EXAMINER REESE, DAVID C	
			ART UNIT 3677	PAPER NUMBER
			MAIL DATE 08/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,118	<b>Applicant(s)</b> WISEMAN, ZACHARY D.	
	<b>Examiner</b> David C. Reese	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-5, 10, 11, 13 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-5, 10, 11, 13 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

THIS FINAL ACTION IS RESPONSIVE TO THE AMENDMENT FILED 6/14/2007.

- Claims 3-5, 10-11, 13, and 22-26 are pending.

#### *Claim Rejections - 35 USC § 102*

[1] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[2] Claims 3-5, 8, 10-14, and 22-26 are rejected under 35 U.S.C. 102(e) as clearly anticipated by Delaney, US-2005/0148809.

The shape and appearance of Delaney is identical in all material respects to that of the claimed design, *Hupp v. Siroflex of America Inc.*, 122 F.3d 1456, 43 USPQ2d 1887 (Fed. Cir. 1997).

As for Claim 22, Delaney discloses of an articulated band (Figs. 1-5), comprising:

a plurality of spherically-configured magnetic components (10D, from col. 2, end of [0022], “The links are provided with vertical as well as horizontal magnetic fields, allowing the wearer to interchange shapes and sizes. Any of the wide variety of shapes, colors, sizes and textures can be linked together to form the jewelry” and from page 3, from [0045], “The user would choose the shape, color, and texture of individual magnetic links 10A-10E, which they prefer. The shapes, which may be a cube 10A, a cylinder or rod 10D and 10E, a sphere 10C...”) having surface contour means defined upon each one of said plurality of spherically-configured magnetic components for defining point-to-point contact loci permitting universal rotational movement, around three mutually orthogonal axes, of each one of said plurality of spherically-configured magnetic components (10D) with respect to an adjacent one of said plurality of spherically-configured magnetic components (10D) when each one of said plurality of spherically-configured magnetic components (10D) is operatively connected to an adjacent one of said plurality of spherically-configured magnetic components (10D, as shown in Fig. 2);

first and second opposite magnetic poles defined within opposite ends of each one of said plurality of spherically-configured magnetic components (10D) so as to permit any one of said plurality of spherically-configured magnetic components (10D) to be magnetically attracted toward and operatively connected to any other one of said plurality of spherically-configured magnetic components (10D) when a first one of said opposite magnetic poles of said any one of said plurality of spherically-configured magnetic components (10D) is operatively engaged with a second one of said opposite magnetic poles of said any other one of said plurality of spherically-configured magnetic components (10D as shown in Fig. 2)); and

a plurality of ferromagnetic components (10E, as shown in Fig. 2) magnetically attracted and attached to at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) as a result of being disposed within at least one annular array defined around at least one of said point-to-point contact loci defined between said at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 3, wherein said articulated band comprises a continuous, uninterrupted, endless loop (as shown in Figs. 1, 4-5).

Re: Claim 4, said endless loop comprises a jewelry item selected from the group comprising a necklace, a bracelet, (Fig. 1), a ring (Fig. 1), and an earring.

Re: Claim 5, wherein each one of said plurality of magnetic components (10D) has the same diametrical extent.

Re: Claim 10, wherein each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and

said at least one annular array of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

Re: Claim 11, wherein each one of said magnetic components (10D) has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings (see middle of [0045]).

Re: Claim 12, wherein said coating is selected from the group comprising gold (see middle of [0045]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

Re: Claim 13, wherein each one of said magnetic components (10D), and each one of said ferromagnetic components (10E), has a coating disposed upon the respective external surface portions thereof which is selected from the group comprising protective and decorative coatings (see middle of [0045]).

Re: Claim 14, wherein said coating is selected from the group comprising gold (see middle of [0045]), silver, platinum, copper, chromium, rhodium, plastics, nickel, and enamels.

Re: Claim 23, wherein said plurality of ferromagnetic components (10E), disposed within at least one annular array defined around said at least one of said point-to-point contact loci defined between said at least one pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci, are disposed within a plurality of annular arrays defined around a plurality of said point-to-point contact loci defined between a plurality of pairs of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 24, wherein each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and each one of said plurality of annular arrays of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

Re: Claim 25, said plurality of annular arrays of said ferromagnetic components (10E), defined around said plurality of said point-to-point contact loci defined between said plurality of pairs of adjacent ones of said plurality of spherically-configured magnetic components (10D)

magnetically connected together at said plurality of point-to-point contact loci, are respectively disposed around each one of said point-to-point contact loci defined between each pair of adjacent ones of said plurality of spherically-configured magnetic components (10D) magnetically connected together at said point-to-point contact loci.

Re: Claim 26, each one of said plurality of spherically-configured magnetic components (10D) has a predetermined diametrical extent; and each one of said plurality of annular arrays of ferromagnetic components (10E) has a predetermined diametrical extent which is substantially the same as said predetermined diametrical extent of each one of said plurality of spherically-configured magnetic components (10D).

***Response to Arguments***

[3] Applicant's arguments filed 6/14/2007 regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Applicant states that Delaney is totally lacking in any teaching of having ferromagnetic components disposed around and magnetically attracted to the magnet components as claimed in independent claim 22. The examiner disagrees. As stated by dictionary.com, a ferromagnetic component is described as "noting or pertaining to a substance, as iron, nickel, or cobalt and various alloys that below a certain temperature, the Curie point, can possess magnetization in the absence of an external magnetic field; that exhibit extremely high magnetic permeability; that align readily with each other in response to an external magnetic field; the property of being strongly attracted to either pole of a magnet". Thus, a magnetic component encompasses that of a ferromagnetic component and labeling magnetic components as ferromagnetic components is deemed proper by the examiner.

Secondly, the applicant states that the ferromagnetic components of Delaney are not disposed within an annular array around point-to-point contact loci defined between adjacent ones of magnetic components. The examiner disagrees and directs applicant to Fig. 2, where it is shown that the ferromagnetic components 10E are indeed interposed not just between but also, in the broadest reasonable interpretation, around point-to-point contact loci defined between adjacent ones of the magnetic components 10D. Applicant is reminded that claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974), and that things clearly shown in reference patent drawings qualify as prior art features, even though unexplained by the specification. *In re Mraz*, 173 USPQ 25 (CCPA 1972).

Lastly, the applicant states that the components 10D of Delaney are not in contact with each other at all. What is claimed, however, from claim 22, is only that the magnetic components are “operatively” connected to adjacent one of said plurality of magnetic components. “Operatively” has a much different meaning than that of “direct” contact for example.

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***Conclusion***

**[4] THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**[5]** Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

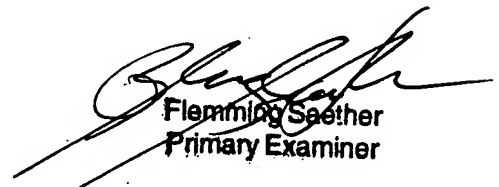
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DCR



David Reese  
Assistant Examiner  
Art Unit 3677



Flemming Sæther  
Primary Examiner